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**Before the**

**TENNESSEE REGULATORY AUTHORITY**

**IN RE:**

**BELLSOUTH TELECOMMUNICATIONS, INC., CITIZENS  
COMMUNICATIONS, INC., UNITED TELEPHONE-SOUTHEAST, INC.  
PETITION FOR EXEMPTION OF CERTAIN SERVICES**

**DOCKET NO. 03-00391**

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**REBUTTAL TESTIMONY  
OF  
TERRY BUCKNER**

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**October 18, 2004**

1 **Q. Please state your name for the record.**

2 A. My name is Terry Buckner.

3

4 **Q. By whom are you employed and what is your position?**

5 A. I am employed by the Consumer Advocate and Protection  
6 Division ("CAPD") in the Office of the Attorney General for the state  
7 of Tennessee ("Office") as a Regulatory Analyst.

8

9 **Q. What is the purpose of your testimony?**

10 A. The purpose of my testimony is to rebut the written direct  
11 testimonies filed with the TRA by BellSouth Telecommunications,  
12 Inc. ("BellSouth") and United Telephone - Southeast ("UTSE").

13

14 **Q. Please comment on the BellSouth testimony in this docket.**

15 A. BellSouth describes the PRI ISDN market as "vigorously  
16 competitive."<sup>1</sup> In support of this characterization, BellSouth cites that  
17 "at least the 12 companies listed"<sup>2</sup> on their exhibit as competitors.  
18 Secondly, BellSouth cites their PRI ISDN promotional offerings and  
19 the promotional offerings of some of their competitors. Finally,  
20 BellSouth cites their "own sales experience in the context of

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<sup>1</sup>K. Blake direct testimony, Page 4, Line 20.

<sup>2</sup>K. Blake direct testimony, Page 4, Line 23.

1 negotiated contract service arrangements (CSAs).”<sup>3</sup> Thus BellSouth  
2 asserts that it has competition for PRI ISDN service and has met  
3 competition with its own promotional offerings and CSAs.  
4 Therefore, BellSouth concludes that based, on this evidence, PRI  
5 ISDN service should be exempt from regulation.  
6

7 **Q. What is wrong with BellSouth’s conclusions?**

8 A. One must presume that BellSouth’s competitors for PRI ISDN  
9 are effective. First of all, there is no evidence of how much PRI  
10 ISDN market share has been lost by BellSouth or even if their  
11 competitive loss is significant. Relative market share strength of  
12 competitors is a critical threshold consideration for PRI ISDN service  
13 to be exempt from regulation. Price can be effectively regulated by  
14 competition only if there is a viable and sustainable competitive  
15 marketplace that consists of independent market entrants. While such  
16 competition can be a good and a desired result, competitive rhetoric  
17 should not supplant just and reasonable evidence as the basis of the  
18 TRA’s decision in this docket. For example, BellSouth cites Sprint as  
19 a competitor for PRI ISDN in their exhibit; BellSouth has provided a  
20 copy of several of Sprint’s web-site pages. Yet, in conversation with  
21 a Sprint’s sales representative, Sprint provides PRI ISDN only in

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<sup>3</sup>K. Blake direct testimony, Page 5, Lines 13-14.

1 UTSE's service territory. Therefore, Sprint is not a competitor to  
2 BellSouth for PRI ISDN service in Tennessee.

3 Secondly, no evidence is provided that PRI ISDN service is  
4 extensively available from competitors in all of BellSouth's  
5 exchanges in Tennessee. In my Exhibit, the June 2004 FCC Report  
6 ("Report") provides local competition data by state at December 31,  
7 2003. Table 16 of the Report indicates that 20% of Tennessee's Zip  
8 Codes have zero Competitive Local Exchange Carriers ("CLECs")  
9 and 34% have only one to three CLECs. So, a total of 54% of the  
10 state's Zip Codes have three or less CLECs. Table 7 shows that the  
11 CLECs have only an 11% share of the Switched End-User Access  
12 Lines in Tennessee. Nationally, CLECs have only a 16% share of  
13 Switched End-User Access Lines, of that 16% only 24% (Table 3) are  
14 CLEC owned Access Lines. Additionally, BellSouth provides no  
15 evidence that economic barriers do not remain for competitors to  
16 provide PRI ISDN service to all of Tennessee.

17 Thirdly, many of the competitors cited by BellSouth are  
18 financially weak. There have been numerous bankruptcy proceedings  
19 and reorganizations. Consequently, it is not known if competition by  
20 these firms can be sustained in the future.

21 Fourthly, the BellSouth conclusions overlook the fact that most  
22 of their competitors are dependent upon BellSouth's facilities to

1 provision their PRI ISDN service. BellSouth remains the dominant  
2 facilities provider in Tennessee and, therefore, controls the wholesale  
3 market that non-facilities based providers depend upon to compete.  
4 Thus, the competitor's pricing of PRI ISDN service is dependent  
5 upon the wholesale prices of BellSouth. As previously stated in my  
6 direct testimony, this type of competition is not likely to result in  
7 sustained head to head competition, which is necessary to effectively  
8 regulate the price of PRI ISDN service.<sup>4</sup>

9 Based on the lack of market share evidence, the poor financial  
10 condition of BellSouth's competitors, BellSouth's dominance in  
11 facilities and control over the wholesale market, and the lack of  
12 multiple competitors throughout Tennessee, BellSouth petition for  
13 exemption of PRI ISDN service is premature and should be denied.  
14

15 **Q. Please comment on the testimony of UTSE in this docket.**

16 A. Like BellSouth, UTSE cites a number of competitors for PRI  
17 ISDN service. UTSE describes their market as "very competitive"<sup>5</sup>  
18 UTSE also speaks anecdotally of their loss of "more than 50% of  
19 head-to-head bids with KMC."<sup>6</sup> Thus, UTSE asserts that it has

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<sup>4</sup>T. Buckner direct testimony, Page 7, Lines 3-5.

<sup>5</sup>D. Marshall direct testimony, Page 1, Line 12.

<sup>6</sup>D. Marshall direct testimony, Page 3, Lines 4-5.

1 competition and has used CSAs as a result of competition. Therefore,  
2 UTSE concludes that based on their evidence, PRI ISDN service  
3 should be exempt from regulation.  
4

5 **Q. What is wrong with UTSE's conclusions?**

6 A. Here again, like BellSouth, it is impossible to determine the  
7 market share of PRI ISDN access lines by UTSE. Absent this critical  
8 market share information, **no action** by the TRA to exempt PRI ISDN  
9 for UTSE from regulation would be the just and reasonable measure.

10 Likewise, the financial condition of UTSE's competitors is a  
11 concern. UTSE is the dominant facilities provider for their service  
12 territory in Tennessee. By their own admission, the competitors must  
13 use "UTSE's last-mile facilities to provision their ISDN-PRI  
14 service."<sup>7</sup> Finally, the availability of multiple competitors throughout  
15 the UTSE service area is unknown.  
16

17 **Q. Please summarize your testimony.**

18 A. The direct testimonies of BellSouth and UTSE are remarkably  
19 void of any tangible evidence in support of their petition for  
20 exemption of PRI ISDN service. There is no demonstration of  
21 market share data by either ILEC nor does either ILEC demonstrate

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<sup>7</sup>D. Marshall direct testimony, Page 2, Lines 8-9.

1       that it is losing market share on PRI ISDN service in specific  
2       exchanges. Consequently, there can be no finding that there is  
3       effective competition existing in either ILEC's market. The financial  
4       condition of their competitors is weak and, consequently, one should  
5       be concerned about how much longer they will remain financially  
6       viable enterprises. The facilities dominance of both ILECs is vastly  
7       superior. This superiority is confirmed in their availability of service  
8       throughout their historical service areas.

9               Based on the lack of market evidence, **exemption would not**  
10       **be in the public interest.** Secondly, the ability to choose a service  
11       provider is predicated on the financial welfare of the service  
12       providers in the marketplace. If this lack of financial viability  
13       continues, then prospective competition will be negligible.  
14       Therefore, an **effective regulator of price for these services will not**  
15       **exist.**

16  
17   **Q.   Does this conclude your testimony?**

18   **A.   Yes, it does.**

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

IN RE:

BELLSOUTH TELECOMMUNICATIONS, INC., CITIZENS  
COMMUNICATIONS, INC., UNITED TELEPHONE-SOUTHEAST, INC.  
PETITION FOR EXEMPTION OF CERTAIN SERVICES

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AFFIDAVIT

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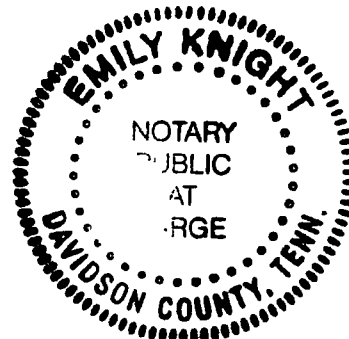
I, Terry Buckner, Regulatory Analyst, for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Rebuttal Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.

  
TERRY BUCKNER

Sworn to and subscribed before me  
this 18<sup>th</sup> day of October, 2004.

  
NOTARY PUBLIC

My commission expires: Sept. 22, 2007



My Commission Expires SEPT. 22, 2007